IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4603 OF 2005

Darshan Lodha. ...Petitioner.

Vs.

St.Andrew's High School, Chinchwad & Ors. ...Respondents.

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Mr. G. S. Godbole for the Petitioner.
Mrs.Anita Agarwal for Respondent No.1.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

August 12, 2005.

P.C.:

Darshan Lodha is a minor, aged 13 years. This Petition has been moved through his mother and guardian. There is a matrimonial discord between his parents. It has been stated that the father left home in 1993. Darshan has been studying at St.Andrew's High School, Chinchwad since June 1998. The school had given a concession in the payment of tuition fees since Darshan was not being supported by his father. However, it is alleged that on 16th June 2004, the Principal of the School issued a letter calling upon the mother to pay a sum of Rs.14,850/- towards

arrears of fees for 2000-04, failing which Darshan would not be admitted to the 7th Standard. The mother is stated to have deposited the amount of Rs.14,850/- on 15th September 2004. Admission was granted to Darshan to the 7th standard on 20th September 2004. By then, a period of three months had already elapsed from the commencement of the Academic Year. At the conclusion of Academic Year 2004-05, the Progress Report Card of Darshan for the 7th Standard showed him as having failed principally on the ground of want of attendance in the first term. At this stage, the Court has been moved in proceedings under Article 226 of the Constitution. The relation between the School authorities and the parent here have been strained and the School has a serious grievance about the conduct of the parent in approaching the press and the police. Reliance has been placed on behalf of the Petitioner on the provisions of Rule 11 of the Rules and Regulations prescribed by the School, which is a recognised Secondary School. Rule 11 provides as follows :

> "11. SECONDARY – To be eligible for promotion, a student is required to obtain 35 marks in each subject of

100 marks and 52 marks in each subject of 150 marks in six compulsory subjects. Marks of both the Semester Examination and those of Annual work done will be included in these marks. However, if a student does not obtain 35% marks in each individual subject, he/she may avail of an automatic condonation total of 15% marks in one or more subjects but not exceeding 10% marks in any one subject."

2. The serious hardship which the student has had to face in the present case is substantially, if not wholly, a result of the matrimonial discord between his parents. We have heard this matter initially in the Court and thereafter in Chambers in order to consider as to whether a satisfactory resolution to the dispute could be found so as to protect in the best possible manner, the interests and welfare of the child without compromising on the discipline and rules of the Institution. During the course of the hearing, the Principal of the School and the Class Teacher attended the hearing before the Court. They were also assisted by Father Nelson

Machado, who is the Secretary of the Pune Diocesan Education, a body which manages several educational institutions. A solution has been found by the parties with the co-operation and good offices of Father Machado. It was suggested that having regard to serious strain in the relations between the parties, the interests and the welfare of the child, it would be appropriate if he seeks admission in St.Jude's High School, Dehu Road, Pune, which is under the management of Pune Diocesan Education. The aforesaid school is an English medium aided school where the fees payable are about Rs.5/- per month. Both Darshan and his mother have visited the school. Darshan who has also been present before the Court, has shown a positive inclination to seek admission at the St.Jude's High School, Dehu Road. The Court has been informed that the facility of a School Bus is available so as to enable Darshan to commute to and from the School.

3. The deficiency of attendance has been as a result of the withholding of admission on the ground of non-payment of school fees. The single parent who is looking after Darshan has

been under severe financial constraints as a result of the matrimonial discord. We do not express any opinion on the conduct of the School in view of the fair attitude shown before the Court in seeking a solution to the dispute. At the same time since the delay in the payment of fees was due to severe financial hardship, this is something for which Darshan should not be made to suffer. Darshan's earlier record in the School is more than satisfactory. The fall in his grades during the 7th Standard is possibly due to the impact of the matrimonial discord between his parents and the hardship occasioned as a result of the strained home environment. This is a fit and proper case where a School Leaving Certificate should be granted to Darshan, declaring him to have cleared Standard VII by condoning the short fall under the provisions of Rule 11, so as to enable him to seek admission to the St.Jude's High School, Dehu Road, Pune in the 8th Standard. Father Nelson Machado, the Secretary of Pune Diocesan Education has assured the Court that upon the grant of a School Leaving Certificate by the Principal of the First Respondent, admission would be granted to Darshan at the St.Jude's High School. The assurance is accepted.

The Principal of the First Respondent has agreed to the suggestion of the Court in regard to the grant of a School Leaving Certificate that would enable Darshan to seek admission to the 8th Standard at St.Jude's High School, Dehu Road, Pune.

4. We clarify that the aforesaid solution has been found in the peculiar facts and circumstances of this case, without creating any precedent in the future. The Education Officer shall not take any penal action against the First Respondent in respect of the grant of the School Leaving Certificate, in view of the peculiar circumstances of the case noted above. Darshan's mother, Mrs.Swarupa Lodha has apologised for her conduct in relation to the School authorities and has withdrawn all allegations against the School through her Counsel.

5. The petition is accordingly disposed of. There shall be no order as to costs.

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